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Remarks

Claims 1, 25, and 26 have been rejected under 35 U.S.C. §102 as being anticipated by Macrae et al., USPP 2004/0103439 which the examiner admits fails to disclose displaying a gateway screen when a TV is turned on or displaying a gateway screen as the last screen presented in response to receiving a signal to deenergize the TV. Accordingly, this rejection will not be further addressed.

Claims 2, 3, 5-8, 11, and 19 have been rejected under 35 U.S.C. §103 as being unpatentable over Macrae et al. in view of Schaffa et al., USPN 5,973,685 and Nishigaki et al., USPN 5,377,357. These rejections are not sustainable. The relied-upon "power up" screen of Schaffa et al. is not a gateway screen as defined in the claims, i.e., one with a TV content panel and one with an Internet content window. Instead, the relied-upon screen of Schaffa et al. is an EPG. Schaffa et al. does not suggest that this screen contain TV and Internet content on power-up, and the examiner has already admitted on the record that the primary reference does not teach that its relied-upon "gateway screen" is displayed on power-up. Simply observing that Schaffa et al. displays something on power-up is irrelevant - every TV or computer displays something on power-up, and Schaffa et al. is no different. But it, like every other previous TV of record, says nothing about displaying a gateway screen having both a TV panel and an Internet panel on start up. The rejection is overcome.

The same comments apply to the relied-upon screen of Nishigaki et al. This screen is from a computer application, col. 1, lines 40-45, it does not include a TV panel, and there is no suggestion that it should.

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Claims 9, 10, 12-18, and 20-24 have been rejected under 35 U.S.C. §103 as being unpatentable over Macrae et al. in view of Schaffa et al. These rejections are based on the same plain error discussed above and are overcome.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed. For example, Applicant challenges each and every taking of official notice on the ground that the takings fail to comply with MPEP §2144.03, which advises that the taking of official notice can be taken only of facts that "are capable of instant and unquestionable demonstration as to defy dispute", giving, as examples, adjusting flame intensity as needed for heat and tape recorders automatically erasing old data when new data is recorded onto them. Official notice of dependent claim limitations "might be appropriate" but only if the facts so noticed "are of notorious character". Applicant challenges the notion that storing a gateway screen in a TV memory is so well known as to be capable of instant and unquestionable demonstration as to defy dispute.

Accordingly, official notice "is permissible only in some circumstances", and should be "rare" in final rejections. In any case, according to the MPEP official notice is most inappropriate of technical facts in areas of esoteric technology or of specific knowledge of the prior art. Still further, "ordinarily there must be some form of evidence in the record to support an assertion of common knowledge", and "general conclusions concerning what is basic knowledge without specific factual findings will not support an obviousness rejection."

It must be noted in addition that the question is not just whether various elements are well known, but also where the prior art supplies the motivation to combine the allegedly well-known features with the


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rest of the claimed elements. That is, regardless of how an element is identified in the prior art, i.e., using a reference or "official notice", the remaining task for an examiner is to show why the prior art suggests the element in the combination claimed.

For each and every taking of official notice, should the rejections be persisted in Applicant hereby requests not only a prior art showing under MPEP §2144.03 but also the requisite prior art suggestion to combine the allegedly well-known feature in the combination being rejected. Applicant explicitly traverses the taking of official notice for failing to comply with the above requirements of the MPEP.

  
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